

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

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|----------------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | CASE NO. 8:05CR242 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | TENTATIVE FINDINGS |
| |) | |
| MARISOL PEREZ-FERNANDEZ, |) | |
| |) | |
| Defendant. |) | |

The Court has received the Presentence Investigation Report ("PSR"). The government has objected to the PSR. (Filing No. 55.) See "Order on Sentencing Schedule," ¶ 6.

The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requires a base offense level of 26, based on a drug quantity of at least 50 but less than 200 grams of methamphetamine. The PSR, however, calculates the drug quantity as 79.1 grams of actual methamphetamine, resulting in a base offense level of 32. The Court notes that the Indictment relates to a mixture or substance containing methamphetamine. The Court's tentative findings are that, barring unusual circumstances, the Rule 11(c)(1)(C) plea agreement should be upheld with respect to the Rule 11(c)(1)(C) agreement.

IT IS ORDERED:

1. The government's objections are granted insofar as the Court, barring unusual circumstances, intends to honor the Rule 11(c)(1)(C) plea agreement;

2. The parties are notified that my tentative findings are that the PSR is correct;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 14th day of November, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge